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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,733	07/31/2001	John Kroeker	57622-045 (ELZK-5)	2704
7590 Toby H. KUSMER McDERMOTT, WILL & EMERY 28 STATE STREET BOSTON, MA 02109				
03/17/2009				
EXAMINER				
OPSASNICK, MICHAEL N				
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/918,733

**Applicant(s)**

KROEGER ET AL.

**Examiner**

MICHAEL N. OPSASNICK

**Art Unit**

2626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1.5-13, 26, 28, 29 and 33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1.5-13, 26, 28, 29 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-883)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5-13, 26, 28, 29 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reding et al (6480598) in view of Bartosik et al (6,725,194).

As per claim 1, Reding et al (6480598) teaches, "a speech recognition system comprising":

"a querying device for posing at least one query over a telephone to a telephone respondent" (col. 7 line 65 – col. 8 line 4; Fig 2b)

"a speech recognition device that is configured and arranged to receive an audio response from said respondent over a communication device and conduct a speech recognition analysis of said audio response to automatically produce a corresponding text response" (col. 5 line 64 – col. 6 line 9);

"a storage device for storing said audio response as it is received by said speech recognition device" (as database storing the audio response as well as other information for the speech recognition – col. 10 lines 24-34).

"a human interface device for enabling said human operator to hear said audio response and review the corresponding text response for the flagged audio response to determine the actual text response for the flagged response, either by selecting from a predetermined list of text response or typing the actual text response if no such match exists in the predetermined list of responses" (col. 6 lines 1-9).

Reding et al (6480598) also teaches the determination of the accuracy of the text generated from the user's speech input, however, the listing of possibilities is presented to the operator either automatically (col. 6 lines 1-9); or semi-automatically based on the user's non-confirmation of accuracy (col. 6 lines 20-25). However, Bartosik et al (6,725,194) teaches "an accuracy determination device for automatically comparing said text response to a text set of expected responses and determining whether said text response corresponds to one of said expected responses, wherein said accuracy is configured and arranged to determine whether said text response corresponds to one of said expected responses within a predetermined accuracy confidence parameter and to flag said audio response so as to produce a flagged audio response for further review by a human operator when said text response does not correspond to one of said expected responses within said predetermined accuracy confidence parameter" (col. 6, lines 7-16 and col. 9, lines 1-62). Therefore, it would have been obvious to one of ordinary skill in the art to incorporate the automatic flagging feature of Bartosik into the recognition

process of Reding et al because it would advantageously improve the recognition of the device (col. 2 lines 30-40, as well as improving the automation of the recognition process, which is of concern in Reding et al).

As per claim 5, Reding et al (6480598) teaches "wherein said human interface device comprises a personal computer including a monitor for enabling the human operator to view said text response and an audio speaker device for enabling the operator to listen to said flagged audio response" (col. 6 lines 1-9),

As per claims 6 and 7, Reding et al (6480598) teaches, "wherein said querying device includes a program having an application file, said application file including code which causes the at least one query to be posed to the respondent, a list of expected responses and an address at which a file containing the received audio response will be stored in the storage device" (col. 11 lines 50-65, col. 12 lines 27-65).

As per claim 8 and 9, Reding et al (6480598) teaches, "wherein said human interface device includes a graphical user interface on which the operator views said text set of expected responses wherein, after listening to said audio response, the human operator is able to select one of said expected responses from said text set of expected response if the operator determines that the response corresponds to one of said expected responses" (col. 12, lines 10-17).

As per claim 10 and 11, Reding et al (6480598) teaches, "wherein said graphical user interface comprises an application navigation window for enabling the operator to navigate

through said text set of expected responses, and an audio navigation window for enabling the operator to control playback of said audio response" (col. 12, lines 10-17).

As per claim 12 and 13, Reding et al (6480598) teaches, "wherein said graphical user interface includes a text entry window which enables the operator to enter a text response if none of said expected responses from said text set of expected responses corresponds to said audio response" (col. 6, lines 1-9 and (col. 12, lines 10-17) – the operator types in their own search parameters if the results are not satisfactory).

Claims 26, 28, 29 and 33, are method steps that are performed by the apparatus claims of claims 1,5-13 and as such, are similar in scope and content to claims 1,5-13 above; therefore, claims 26,28,29,33 are rejected under similar rationale as presented against claims 1,5-13 above.

### ***Response to Arguments***

3. Applicant's arguments filed 12/30/2008 have been fully considered but they are not persuasive. Examiner notes the introduction of the Reding et al patent to address the new claim limitations regarding the separateness of the user and operator, and that the new rejection is Reding et al in view of Bartosik.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Opsasnick, telephone number (571)272-7623, who is available Tuesday-Thursday, 9am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Richemond Dorvil, can be reached at (571)272-7602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Michael N. Opsasnick/  
Primary Examiner, Art Unit 2626  
3/15/09